

units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 4208.4(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA. The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 4208.3(c)(4).

(d) *Base year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

**§ 4208.9 Plan adoption of additional abatement conditions.**

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 4208.4, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after

the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN-PIN last filed with the PBGC. If an EIN-PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date;

(iii) The full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) The full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of ERISA.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in

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paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement amendment is not consistent with the purposes of ERISA unless the PBGC determines that—

(1) The amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate; and

(2) The amendment would not significantly increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control no. 1212-0039)

## PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

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4211.37 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

AUTHORITY: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

SOURCE: 61 FR 34097, July 1, 1996, unless otherwise noted.

## Subpart A—General

### § 4211.1 Purpose and scope.

(a) *Purpose.* Section 4211 of ERISA provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: the presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 4211.3, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocative method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C sets forth the criteria and procedures for PBGC approval of nonstatutory alternative allocation methods. Section 4211(c)(5) of ERISA also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under subpart C. Finally, under section 4211(f) of ERISA, the PBGC is